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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,726	07/15/2003	Charles L. Gray JR.	310121.404	9061

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EXAMINER

AVERY, BRIDGET D

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/620,726

Applicant(s)

GRAY, CHARLES L.

Examiner

Bridget Avery

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 17, 18 and 28-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7-10, 12, 19-25 and 27 is/are rejected.
- 7) ☒ Claim(s) 4, 6, 11, 13-18 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Invention I (claims 1-27), Species I (Figures 1, 2A, 2B, and 3) and Sub Species I (Figures 5-7) in the reply filed on May 13, 2005 is acknowledged.
2. Claims 17, 18 and 28-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 13, 2005.
3. An action on the merits of claims 1-16 and 19-27 follows.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 5 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. In claims 5 and 12, applicant's recitation of "the spacer is a shim, bushing, spring, or any other similar device" is unclear rendering the claim indefinite.

### ***Claim Rejections - 35 USC § 102***

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 7-10, 19-25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Carpenter (US Patent 3,960,284).

McGowan teaches an assembly similar to applicant's including:

- A first and second pump/motor (50, 68)
- A first and second drive plate assembly (60)
- A common shaft (66)
- The plate assemblies (60) are in hard contact with a first end of the shaft (66) in a plane perpendicular to the longitudinal axis of the shaft (66)
- The plate assemblies and shaft acting as a solid element when under compression to cancel axial loads generated by the pump/motors (50, 68) through the shaft (66)
- A first and second annular bearing (76, 78)
- A torque transferring assembly/unit (32) see also column 1, lines 5-9

Re claims 25 and 27, the method of operating a plurality of pump motors and the method of improving the efficiency of two or more opposing pump/motors is inherently disclosed. The rationale for this inherency is that the prior art device, in its normal and usual operation, would necessarily perform the claimed method. See MPEP 211.02.

***Allowable Subject Matter***

7. Claims 4, 6, 11, 13-16 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 5 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Porter shows an on-demand all wheel drive system

Bowen shows an on-demand two-speed transfer case for four-wheel drive hybrid vehicle.

Eickmann shows an axial piston motor or pump with arrangement to thrust the rotor against a shoulder of the shaft.

Leonard shows a pump-motor power limiter and pressure relief.

Takao et al. shows a hydraulic motor unit.

Aschke shows a hydrostatic pump/motor unit.

Chichester et al. shows a hydrostatic propulsion system.

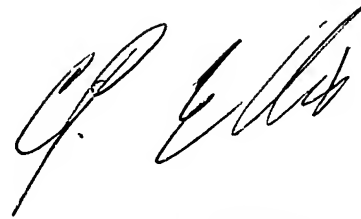
Carpenter shows hydraulic backhoe circuitry.

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10. Any inquiry concerning this communication should be directed to Bridget Avery at telephone number 703-308-2086.

  
Avery

July 20, 2005



CHRISTOPHER P. ELLIS  
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TECHNOLOGY CENTER 3600